

purchaser of the switch port may recover in any lawful manner the charges the incumbent LEC assesses on them.¹⁸⁴

60. A number of petitioners seek clarification or reconsideration of issues relating to the manner in which incumbent LECs recover their number portability costs from other carriers. MCI seeks clarification that any costs associated with a number portability charge to carriers purchasing unbundled switching be calculated based on Total Element Long Run Incremental Cost (TELRIC), and that costs for number portability charged to resellers be based on avoided costs.¹⁸⁵ MCI claims that, to comport with the costing requirements of the 1996 Act, charges assessed on carriers purchasing unbundled switching or resale must be cost-based, citing section 251(c)(3) and (4).¹⁸⁶ Comcast seeks clarification that incumbent LECs may not recover their number portability costs through interconnection charges or add-ons to interconnection charges to their carrier "customers," and that incumbent LECs may not seek to recover carrier-specific costs through interconnection charges to other carriers where no number portability functionality is provided.¹⁸⁷ PCIA requests that the Commission affirm that paging providers are co-carriers for purposes of cost recovery, not end-users, and, for this reason, should not be assessed end-user fees.¹⁸⁸ PCIA asserts that the Commission has held in past orders that all CMRS providers, including paging providers, are to be treated by LECs as co-carriers.¹⁸⁹

b. Discussion

61. In our view, MCI's request for clarification addresses prices for unbundled network elements and resale, and not the mechanism established by the Commission in the *Third Report and Order* by which incumbent LECs may recover their costs of implementing long-term number portability.¹⁹⁰ The statutory language relating to number portability costs differs from the sections governing the pricing of unbundled network elements and resale rates. Section 251(e)(2), which the Commission applied in the *Third Report and Order* to create the LNP end user charge, provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." By contrast, the Commission has found that section 251(c)(3) requires incumbent LECs to price unbundled

¹⁸⁴ *Id.*

¹⁸⁵ MCI Petition at 6-7.

¹⁸⁶ *Id.* at 6.

¹⁸⁷ Comcast Petition at 2-6.

¹⁸⁸ PCIA Petition at 5-7.

¹⁸⁹ PCIA Petition at 6-7.

¹⁹⁰ See generally *Third Report and Order*, 13 FCC Rcd at 11731-32, 11738-41, 11773-79, paras. 53, 68-77, 135-47.

network elements under the TELRIC pricing methodology,¹⁹¹ and that section 251(c)(4) requires that resale rates be set at the retail rate minus any avoided costs.¹⁹² Although the Commission decided in the *Third Report and Order* to permit carriers to impose end user surcharges on purchasers of unbundled switching ports and resellers, it did not find that these surcharges thereby became an element of the UNE or resale rates.¹⁹³ Our decision to permit the imposition of end user surcharges on purchasers of unbundled switching ports and resellers was, instead, based upon the conclusion that, although incumbent LECs will provide the underlying number portability functionality in such situations, they will no longer have a direct relationship with the end users.¹⁹⁴ Instead, the purchaser of the unbundled switch port and the reseller receive all their number portability functionality from the incumbent through these arrangements.¹⁹⁵ Moreover, we believe that application of the TELRIC standard would be inappropriate because the LNP end-user charge is intended to recover the short-term costs of number portability,¹⁹⁶ whereas TELRIC is designed to recover long-run costs. Accordingly, we conclude that the LNP end-user charges for number portability associated with unbundled switching ports and resellers are not part of the rate elements for these services. We therefore deny MCI's request that the LNP costs associated with unbundled switch ports and resale be based on the statutory standards set forth in sections 251(c)(3) and 251(c)(4), respectively, and reaffirm that they are governed by the competitively neutral standard set forth in section 251(e)(2).

62. We agree with Comcast that incumbent LECs may not recover any number portability costs through interconnection charges or add-ons to interconnection charges to their carrier "customers," nor may they recover carrier-specific costs through interconnection charges to other

¹⁹¹ See 47 C.F.R. §§ 51.501-09. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission's pricing rules in 1996, *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8th Cir. 1997), the Supreme Court restored the Commission's pricing authority and remanded to the Eighth Circuit for consideration of the challenged rules. *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 385 (1999). On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific rules contained within the Commission's pricing rules were contrary to congressional intent. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000), *cert. granted sub nom., Verizon Communications v. FCC*, 531 U.S. 1124 (2001). The Eighth Circuit has stayed the issuance of its mandate, *Iowa Utils Bd. v. FCC*, No. 96-3321, *et al.* (8th Cir. Sept. 25, 2000), pending appeal before the Supreme Court, which has granted certiorari in the case. *Verizon Communications v. FCC*, 531 U.S. 1124 (2001). Accordingly, the Commission's rules continue in effect at this time.

¹⁹² In *Iowa Utilities Bd. v. FCC*, see n.191, *supra*, the Eighth Circuit concluded that section 252(d)(3) of the Communications Act requires costs that are actually avoided, not those costs that could be avoided, be excluded from wholesale rates offered to resellers. *Iowa Utilities Bd. v. FCC*, 219 F.3d at 755.

¹⁹³ *Id.*, 13 FCC Rcd at 11778, para. 146.

¹⁹⁴ *Id.* at 11778, para. 146.

¹⁹⁵ *Id.* The unregulated reseller and purchaser of the unbundled switch port can, in turn, recover in any lawful manner the charges the incumbent assesses on them.

¹⁹⁶ See *Third Report and Order*, 13 FCC Rcd at 11777, para. 144. This cost recovery method limits the ability of carriers to impose costs on other carriers. Indeed, a cost structure for LNP may not be competitively neutral if it permits a carrier to shift a disproportionate share of costs onto another carrier. See para. 11, *supra*.

carriers where no number portability functionality is provided.¹⁹⁷ To the extent necessary, we clarify our decision accordingly. The *Third Report and Order* allows incumbent LECs to assess number portability charges in limited circumstances and only where the incumbent LEC provides number portability functionality: (1) on resellers of the incumbent LEC's local service; (2) on purchasers of switching ports as unbundled network elements under section 251; and, (3) on other carriers for whom the LEC provides query services.¹⁹⁸ Allowing the incumbent LECs to assess an end-user charge on resellers and on purchasers of switching ports as unbundled network elements is competitively neutral because the reseller and the purchaser of the switch port will incur the charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere.¹⁹⁹

63. In considering the issue of recovery of costs through charges on other carriers, Comcast asks that we recognize that we have not fully addressed how wireless providers and other non-incumbent LECs will recover their carrier-specific costs.²⁰⁰ Comcast argues that, for technical reasons, wireless providers cannot perform queries for themselves or for other carriers and, accordingly, must recover their carrier-specific costs through end-user charges. Comcast further asserts that the inability of wireless providers to recover any of their costs from other telecommunications providers means that the current cost recovery scheme creates a cost advantage for incumbent LECs, who can recover their costs both through query charges and end-user charges.²⁰¹

64. We disagree. First, we note that the Commission has fully addressed the issue of how other carriers, including non-incumbent LECs and wireless carriers, may recover their costs of number portability. Specifically, we held that carriers not subject to rate regulation -- such as competitive LECs, CMRS providers and non-dominant IXC's -- may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act.²⁰² Second, we disagree that CMRS carriers are at a competitive disadvantage because they cannot perform, and charge other carriers for, query services. In filing number portability tariffs, incumbent LECs must allocate their carrier-specific costs incurred only to provide portability functions for end-users to that service and costs incurred specifically to provide only one particular type of query service to that service.²⁰³

¹⁹⁷ Comcast Petition at 3.

¹⁹⁸ *Third Report and Order*, 13 FCC Rcd at 11778-79, paras. 146-147; see also Bell Atlantic Response at 3 (pointing out that the *Third Report and Order* allows incumbent LECs to 1) pass the end user charge to resellers and unbundled network element purchasers, and 2) charge other carriers for number portability query service).

¹⁹⁹ *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

²⁰⁰ Comcast Reply at 3.

²⁰¹ *Id.* at 3-4.

²⁰² *Third Report and Order*, 13 FCC Rcd at 11774, para. 136.

²⁰³ *Id.*, 13 FCC Rcd at 11778-79, para. 147; *Cost Classification Order*, 13 FCC Rcd at 24511, para. 40.

Remaining eligible costs should be allocated on the basis of the capacity requirements for each type of service.²⁰⁴ Requiring carriers to allocate their costs in this manner ensures that incumbent LECs will not use their query service charges to other carriers for the recovery of the costs of providing number portability service to end-users, thereby achieving a lower end-user charge.²⁰⁵ Moreover, although we recognized in the *Third Report and Order* that some small LECs and CMRS providers may find that their smaller customer bases might make adding number portability capability in their own networks uneconomical, we also recognized that such carriers have other options for achieving economies of scale similar to those of the larger incumbent LECs. For example, such carriers could arrange for another carrier to perform queries for them, enter into cooperative agreements with other small carriers, or install number portability in their own networks and use excess number portability capacity to provide query services to other carriers.²⁰⁶ Thus, we affirm our conclusion that our competitive neutrality standard is met if we leave unregulated those carriers not subject to rate regulation.²⁰⁷ We, therefore, decline to establish a federal recovery mechanism for these carriers.

65. Moreover, we clarify that CMRS providers and paging providers are co-carriers with incumbent LECs for the purpose of number portability cost recovery, and should not be assessed end-user charges.²⁰⁸ In the recent investigation of the number portability tariff filings of Ameritech, GTE, and SBC, the Commission found unlawful Ameritech's imposition of number portability surcharges on CMRS providers' Type 1 DID/DOD Trunks.²⁰⁹ In making that

²⁰⁴ *Cost Classification Order*, 13 FCC Rcd at 24511, para. 41.

²⁰⁵ We distinguish, however, the situation where an incumbent LEC incurs costs for query services that other carriers or third parties provide. As with other carrier-specific costs directly related to providing number portability to end users, incumbent LECs may recover such costs with a five-year monthly charge on the end-users it serves from a number portability capable switch. See *Third Report and Order*, 13 FCC Rcd at 11776-77, para. 143. If an incumbent LEC in such a situation does not have a number portability-capable switch, it should keep track of the query costs it incurs from other carriers or third parties. The incumbent LEC may begin recovering those costs from its end users when it begins to serve them from a number portability-capable switch. In the case of incumbent LECs serving carriers in EAS, these carriers may recover their query costs and LNP administration charges through an end-user charge as discussed in Section III.C.1 of this order for a limited period of five years from the date of the first end-user charge. Any costs the incumbent LEC incurs subsequently for implementation of a number portability network may also be recovered for a limited five-year period in accordance with section. These five-year periods may run consecutively or concurrently. Incumbent LECs may recover for each type of LNP cost during only one five-year period.

²⁰⁶ *Id.* at 11775, para. 138.

²⁰⁷ *Id.* at 11774, para. 136.

²⁰⁸ Pursuant to our rules, incumbent LECs may "assess each end user it serves . . . one monthly number-portability charge per line . . ." 47 C.F.R. § 52.33(a)(1)(i).

²⁰⁹ See *Long-Term Number Portability Tariff Filings of Ameritech, et al.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11883, 11933, para. 109 (1999) (*LNP Investigation Order*). In addition to discussing this issue in their Comments in that proceeding, Arch and PCIA filed a Petition for Reconsideration of the *LNP Designation Order* requesting clarification that CMRS carriers are co-carriers, not end users, and may not be assessed monthly surcharges. Arch asserted that its local exchange provider, Ameritech, was billing Arch a "Service (continued....)"

decision, the Commission reasoned that, as in the context of access charges, CMRS providers and paging providers are carriers, not end users, for purposes of number portability.²¹⁰ Our number portability rules specify that monthly number portability surcharges may be assessed only on end users, not carriers.²¹¹ We also agree with Arch's assertion that incumbent LECs may not impose a monthly end-user charge on all Type 1 interconnections by analogizing such connections to a PBX-type service, on which LECs may impose monthly surcharges.²¹² As we stated in *Bell Atlantic Cellular*, "it is clear that PBX service is quite different than that of [radio common carrier] interconnections."²¹³ The most notable difference is that a PBX trunk connects an end-user premise and a LEC switch, while a Type 1 connection links the LEC to the Mobile Telephone Switching Office (MTSO), which is not an end-user premise.²¹⁴ We thus agree with PCIA and Arch that, because CMRS providers and paging companies are co-carriers and not end-users, they should not be assessed an end-user charge by LECs. Moreover, we conclude that an interpretation that our orders and rules governing local number portability permit incumbent LECs to impose an end-user charge on all Type 1 interconnections is unreasonable. We find that our orders clearly prohibit carriers from imposing their end-user query costs on other carriers, except in very limited circumstances where the incumbent LEC also provides the number portability functionality.

3. Recovery of Number Portability Costs from Feature Group A Access Lines

a. Background

66. Feature Group A is a local exchange service that is used to provide interstate access service to IXCs and end users.²¹⁵ Feature Group A access provides IXCs with dedicated transmission facilities from the IXC's Point of Presence (POP) to a LEC central office.²¹⁶ Within Local Access and Transport Areas (LATAs) in which an IXC takes Feature Group A service, a

(Continued from previous page)

Provider Number Portability Monthly Charge" on all of Arch's Type 1 Wireless Interconnection trunks. See Petition for Partial Reconsideration of Order Designating Issues for Investigation (filed Mar. 26, 1999) (Arch Petition); *Long-Term Telephone Number Portability Tariff Filings of Ameritech, et al.*, CC Docket No. 99-35, Order Designating Issues for Investigation (*LNP Designation Order*), 14 FCC Rcd 3367 (1999).

²¹⁰ *LNP Investigation Order*, 14 FCC Rcd at 11934, paras. 110-111.

²¹¹ 47 C.F.R. § 52.33(a)(1)(i).

²¹² Arch Petition at 11.

²¹³ *Bell Atlantic Telephone Companies*, Transmittal No. 418, Order, 6 FCC Rcd 4794, 4795, para. 10 (1991) (*Bell Atlantic Cellular*).

²¹⁴ *Id.*

²¹⁵ See *AT&T Communications Tariff F.C.C. Nos. 9 and 11*, CC Docket No. 94-120, Memorandum Opinion and Order, 10 FCC Rcd 4288, 4289-91, paras. 2-6 (1995).

²¹⁶ *Id.* at 4289-90, paras. 2-3.

caller reaches the IXC's POP by dialing a Feature Group A ten-digit number, plus an authorization code and the ten digit number the customer wishes to reach.²¹⁷ The caller must pay any local toll charges incurred to reach the IXC's POP, in addition to the IXC's toll charges; when the LEC terminates a call through a Feature Group A arrangement, however, the LEC generally will carry the call anywhere within the receiving service area without assessing additional toll charges.²¹⁸ Feature Group A service is also used by non-carrier entities as part of an interstate Foreign Exchange (FX) or Off Network Access Line (ONAL) arrangement.²¹⁹ In this type of arrangement, the Feature Group A customer obtains from a LEC a combination of local exchange service and dedicated interoffice transport facilities linking the LEC dial tone office to an IXC POP.²²⁰ The IXC POP is linked to the out-of-state Feature Group A customer by an interstate private line, which enables end users in the dial tone office area to reach out-of-state Feature Group A customers without incurring interstate toll charges.²²¹ The dial tone office processes the call originating in its service area as a local call and delivers it to the dedicated trunked transport and, ultimately, to the IXC's interstate private line for transmission to the Feature Group A customer.²²²

67. Several petitioners request that the Commission revise or clarify the Commission's new rule, found at section 52.33(a)(1)(ii), to allow incumbent LECs to assess a surcharge on Feature Group A lines.²²³ The petitioners assert that because Feature Group A lines are used as a form of access lines and the telephone numbers associated with them are portable, the Commission should clarify or find upon reconsideration that carriers may charge Feature Group A end users and carriers an LNP monthly end-user surcharge.²²⁴ The petitioners assert that such surcharge should be allowed, notwithstanding that the service is obtained through an access tariff and the Commission specifically prohibits the recovery of number portability costs through access charges.²²⁵ In opposition, parties assert that a surcharge should not be assessed purchasers of Feature Group A access, because number portability costs can be recovered from other carriers only through query charges, not through surcharges.²²⁶ Parties opposed to the request assert that the request is an attempt to circumvent the Commission's decision that carriers should not be

²¹⁷ See *id.* at 4290, para. 4.

²¹⁸ *Id.*

²¹⁹ *Id.* at para. 5.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ Ameritech Petition at 13; Bell Atlantic Petition at 1; SBC Reply at 1-2.

²²⁴ See Ameritech Petition at 13.

²²⁵ *Id.*

²²⁶ See AT&T Opposition at 12-13; Ameritech Reply at 2.

required to pay other carriers' LNP costs.²²⁷ Additionally, some commenters assert that carriers are already paying access fees for Feature Group A service and should not also be charged an end-user surcharge.²²⁸

b. Discussion

68. In the *Third Report and Order*, we determined that incumbent LECs may assess end-user surcharges on resellers as well as purchasers of switching ports as unbundled network elements,²²⁹ based on our conclusion that incumbent LECs will provide the underlying number portability functionality in such situations, although they will no longer have a direct relationship with the end-users.²³⁰ We did not allow incumbent LECs to assess surcharges on carriers that purchase only their local loops as unbundled network elements, however, because the unbundled local loop does not contain the number portability functionality.²³¹ Accordingly, the purchaser of the unbundled loop still will be responsible for providing such functionality and, thus, incurring elsewhere the corresponding cost.²³²

69. We clarify, however, that carriers who offer Feature Group A access lines may assess a monthly surcharge on such lines. We conclude that this clarification is consistent with our decision in the *Third Report and Order* that incumbent LECs may impose a monthly surcharge on resellers as well as on purchasers of switching ports as unbundled network elements. We will amend section 52.33(a)(1)(ii) of our rules to reflect this clarification. We agree with the parties' assertion that the LEC providing the Feature Group A line also provides the underlying number portability functionality, and should be allowed to recover its number portability costs through a surcharge on the Feature Group A line.²³³ Our conclusion is based on the determination that the Feature Group A line, whether providing access to the end-user's private network or a connection between an end office and the IXC's POP, connects to the end office switch and uses that switch in the same manner that an end-user line does.²³⁴ Because a Feature Group A line connects to the end office switch, uses the switch in the same manner as an ordinary end-user line, and uses a ten-digit telephone number that is portable,²³⁵ the incumbent LEC is responsible for providing the underlying number portability functionality and may thus recover its permissible incremental

²²⁷ MCI Response at 8; Vanguard Opposition at 4-5.

²²⁸ See MCI Response at 8.

²²⁹ *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Bell Atlantic Reply at 1-2; SBC Reply at 2 n.4.

²³⁴ Bell Atlantic Petition at 1; Ameritech Reply at 2.

²³⁵ See Bell Atlantic Petition at 1; Ameritech Reply at 2.

costs through a monthly surcharge on the Feature Group A line.

70. We disagree with AT&T's assertion that when Feature Group A lines are used to connect a LEC end office and an IXC's POP, allowing a LEC to assess a number portability surcharge on the IXC would result in double billing.²³⁶ Incumbent LECs may only assess one end-user charge per line.²³⁷ Additionally, as discussed below, incumbent LECs may not recover their number portability costs through increased access charges. Therefore, allowing incumbent LECs to assess one end-user surcharge on Feature Group A lines does not result in double billing.

71. We disagree with Vanguard's assertion that we are "reclassifying" carriers who purchase Feature Group A lines as end users in order to allow incumbent LECs to assess end-user surcharges.²³⁸ We merely find that such carriers are in a situation similar to end users and incumbent LECs may recover their number portability costs in such a situation. As discussed above, we allow such cost recovery because in this situation, the carrier purchasing Feature Group A service is in the same position as an end user. Additionally, in response to AT&T's request that only Feature Group A line end-users, but not carriers who use Feature Group A lines, be assessed a surcharge, we note that SBC asserts that incumbent LECs are incapable of identifying the nature of the customer purchasing the Feature Group A service and cannot differentiate between such customers for purposes of a number portability-related charge.²³⁹ We also agree with Bell Atlantic that the label that is on the service should not determine whether the number portability surcharge applies to that service, but rather whether the telephone number associated with the line is capable of being ported to another carrier. Feature Group A lines satisfy this test.²⁴⁰

72. We disagree with Vanguard's assertion that allowing LECs to assess this surcharge would require carriers purchasing Feature Group A to purchase portability functionality, regardless of whether that functionality has any utility for the purchasing carrier.²⁴¹ We noted in the *Third Report and Order* that it is competitively neutral to allow an incumbent LEC to assess an end-user surcharge because the reseller and unbundled switch port purchaser will receive all their number portability functionality through these arrangements and will incur such costs in lieu of costs they would otherwise incur in obtaining number portability functionality elsewhere.²⁴² We agree with the numerous commenters who assert that Feature Group A lines have their own ten-digit numbers which are portable, and thus incumbent LECs may recover

²³⁶ See AT&T Opposition at 13.

²³⁷ See *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

²³⁸ Vanguard Opposition at 4-5.

²³⁹ SBC Reply at 3.

²⁴⁰ Bell Atlantic Reply at 2 (citing *Third Report and Order*, 13 FCC Rcd at 11776, 11778, paras. 142, 146).

²⁴¹ Vanguard Opposition at 5.

²⁴² *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

their number portability costs through an end-user surcharge.

73. We also disagree with Vanguard's assertion that allowing carriers to assess end-user charges on other carriers would permit the incumbent LECs to recover number portability costs through interstate access charges, albeit indirectly.²⁴³ Such incumbent LECs are providing the number portability functionality to the carriers and may recover such costs through the end-user surcharge. Although the Feature Group A service is obtained through an access tariff, incumbent LECs assign Feature Group A lines a ten-digit number that is portable, and a LEC providing such underlying number portability functionality may recover its costs through a monthly end-user surcharge.²⁴⁴

4. Recovery of Number Portability Costs from Centrex and PBX Lines

a. Background

74. Business customers with a large number of telephone lines may choose to connect their users with each other and with other telephone lines in one of two ways: Centrex or a PBX.²⁴⁵ Centrex customers receive service from a LEC's central office switch via line side connections, while in a PBX arrangement, customers are connected to the central office switch via trunk side connections.²⁴⁶ In the *Third Report and Order*, we held that incumbent LECs may assess end-users one monthly number portability charge per line, but applied a line-to-trunk equivalency ratio in the case of PBX trunks.²⁴⁷ We observed, as we had in the *Access Charge Reform Order*, that one PBX trunk provides, on average, the equivalent service capacity of nine Centrex lines.²⁴⁸ For this reason, we allowed LECs to assess one monthly end-user charge per Centrex line, and nine monthly number-portability end-user charges per PBX trunk.²⁴⁹ Our decision was based on our determination that in the absence of this line-to-trunk equivalency ratio, large customers would be encouraged to choose one of these arrangements over the other because of the number portability charge, an outcome that we concluded would violate the competitively neutral requirement of section 251(e)(2).²⁵⁰

75. A number of incumbent LECs request reconsideration of this equivalency

²⁴³ Vanguard Opposition at 5.

²⁴⁴ See SBC Petition at 2.

²⁴⁵ *Access Charge Reform*, CC Docket No. 96-262, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606, 16615-19, paras. 31-42 (1997) (*Access Charge Reform Order*).

²⁴⁶ *Id.* at 16616, para. 32.

²⁴⁷ *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

determination.²⁵¹ According to the incumbent LECs, while the Commission sought to create a similar type of "equivalency" between Centrex and PBX trunk subscribers, we erred in establishing the 9:1 equivalency ratio.²⁵² The petitioners argue that rather than treating the PBX trunk as a single unit, the Commission incorrectly treated the Centrex subscriber as the unit of reference and allowed PBX customers to be charged 9 times the amount charged the Centrex customer.²⁵³ Petitioners argue that we should have used the exact equivalency ratio used in the access charge context, that is, assessing one line charge for PBX and one-ninth of a line charge for Centrex. For number portability, we allowed carriers to assess nine charges for PBX and one charge for Centrex.

b. Discussion

76. We agree with those carriers who assert that a trunk equivalency ratio is needed to account for the service capacity differences between a PBX trunk and a Centrex line. We also agree that the PBX trunk provides, on average, the equivalent service capacity of nine Centrex lines.²⁵⁴ We disagree, however, that we have deviated from the trunk equivalency ratio adopted in the *Access Charge Reform Order*²⁵⁵ and affirm our earlier finding that Centrex lines may be assessed one number portability charge and PBX trunks may be charged nine number portability charges.

77. Consistent with our decision in the *Access Charge Reform Order*, we find that a 9:1 ratio is "reasonable and administratively simple."²⁵⁶ The one-ninth charge urged by the petitioners, on the other hand, is unreasonable and would be administratively difficult to use in computing tariffs. Were we to adopt the petitioners' suggestion and reduce the Centrex line number portability charge, incumbent LECs would be required to assess one-ninth of a charge on all other end-user lines, to avoid a discriminatory rate and one that impermissibly imposes the burden of number portability on residential end-users. We note that the petitioners have failed to address the impact of the proposed change in the equivalency ratio on residential customers.

78. Ameritech²⁵⁷ and UTC assert that the 9:1 trunk equivalency ratio is a major policy change from our earlier access charge reform ratio that was made without a public policy or cost justification.²⁵⁸ These carriers state that the Commission did not make any finding that PBX

²⁵¹ See, e.g., Bell Atlantic Petition at 2; BellSouth Petition at 2-5; U S WEST Petition at 3-7.

²⁵² See U S WEST Petition at 4.

²⁵³ *Id.*

²⁵⁴ *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

²⁵⁵ Bell Atlantic Petition at 2; BellSouth Petition at 4-5

²⁵⁶ *Access Charge Reform Order*, 12 FCC Rcd at 16617-18, para. 38.

²⁵⁷ We note that SBC acquired Ameritech after the filing of the pleadings in this proceeding.

²⁵⁸ Ameritech Petition for at 9; UTC Comments at 3-4; see also U S WEST Petition at 4- 5.

customers should make a disproportionate contribution to the costs of number portability, nor did it find any cost justification for forcing PBX customers to pay multiple number portability monthly charges.²⁵⁹ Bell Atlantic makes the same argument.²⁶⁰ We disagree. The equivalency ratio remains the same -- 9:1 -- based on our finding that a PBX trunk provides approximately the same functionality as nine Centrex lines.²⁶¹ We also disagree that we are imposing a disproportionate contribution to the costs of number portability on PBX customers. To the contrary, the trunk equivalency ratio compensates for the fact that one PBX trunk provides the functionality of approximately nine Centrex lines and is intended to place PBX and Centrex services on an equal footing with respect to number portability charges so that customers do not choose one service over the other because of the number portability charge.

79. We also are not persuaded that the equivalency ratio established in the *Third Report and Order* should be changed.²⁶² The 1:1/9 ratio will materially impact billing systems that are already configured for access charges assessed on PBX and Centrex at a nine to one ratio. We recognize, as we did in the *Third Report and Order*, that number portability is a new service that will require carriers to incur costs to modify their networks to provide number portability.²⁶³ We do not find that changes in billing systems, if any, resulting from the 9:1 ratio, would support the requested change to a 1:1/9 ratio. Moreover, we note that in the *Cost Classification Order*, we stated that carriers may not recover the costs of "billing or order processing systems" unless they can clearly distinguish costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement number portability.²⁶⁴

80. SBC asserts that Plexar systems are unique PBX-like arrangements that ascribe separate 7- and 10-digit telephone numbers to each station in the system, with a single local exchange provider providing all the stations in the Plexar system.²⁶⁵ Accordingly, SBC requests that Plexar systems be assessed one number portability charge, not nine.²⁶⁶ SBC asserts that a 9:1 ratio relating to the number of Plexar stations to an equivalent number of individual voice paths is an effective means for levying per-line charges under the access charge reform rulemaking.²⁶⁷ SBC further asserts that a similar ratio was used for Centrex, and thus Plexar and PBX trunks should

²⁵⁹ Ameritech Petition at 9; UTC Comments at 4.

²⁶⁰ Bell Atlantic Petition at 2.

²⁶¹ *Third Report and Order*, 13 FCC Rcd at 11777, para. 145.

²⁶² Ameritech Petition at 10; US WEST Reply at 7.

²⁶³ *Third Report and Order*, 13 FCC Rcd at 11728, para. 46.

²⁶⁴ *Cost Classification Order*, 13 FCC Rcd at 24501, para. 12.

²⁶⁵ SBC Petition at 3.

²⁶⁶ *Id.* at 3-4.

²⁶⁷ *See id.* at 4.

be assessed one portability charge, rather than one-ninth of the charge per Centrex line.²⁶⁸ AT&T disagrees, and asserts that because Plexar is like Centrex in that every Plexar telephone line has its own dedicated connection to switching equipment it should be assessed one number portability charge, not nine.²⁶⁹ In a prior rulemaking, we examined the relationship between Plexar and Centrex, and determined that Plexar offers a nearly identical functionality to Centrex.²⁷⁰ We agree with AT&T that because each station in the Plexar system has its own dedicated connection to a switch, it is similar to Centrex and should be assessed the same number portability charge, that is, one number portability charge per line.²⁷¹

81. Finally, we disagree with those commenters who assert that a 9:1 line-to-trunk ratio is not competitively neutral. Indeed, the ratio is specifically aimed at ensuring that, by treating end-users in a nondiscriminatory manner, the local number portability cost recovery mechanism fulfills section 251(e)(2)'s competitively neutral mandate. We, therefore, affirm our conclusion that in the absence of establishing a 9:1 equivalency between a PBX trunk and Centrex subscribers, large customers would be encouraged to choose one of these arrangements over the other because of the number portability charge, an outcome that would violate the competitive neutrality requirements of section 251(e)(2).²⁷²

82. We also disagree with those carriers who assert that allowing one charge for Centrex lines and nine charges for PBX trunks is not competitively neutral, because competitive LECs are not required to assess number portability monthly charges on these services.²⁷³ These carriers assert that competitive LECs are free to recover their costs as they see fit and are thus not required to "overcharge" their PBX customers in order to recover their number portability costs.²⁷⁴ In response, we note that incumbent LECs are not required to "overcharge" their PBX customers, but rather may, if they wish, assess up to nine portability charges due to the PBX trunk's higher capacity.²⁷⁵ We also determined in the *Third Report and Order* that carriers not subject to rate regulation, such as competitive LECs, may recover their carrier-specific costs

²⁶⁸ *Id.*

²⁶⁹ AT&T Opposition at 11-12.

²⁷⁰ See *Public Utility Commission of Texas*, Docket No. CCB Pol 96-13, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3559 n.492 (1997) ("[a]lthough SWBT Centrex and Plexar services were different in several respects, they provided virtually the same functionality"); see also *Rules and Policies Regarding Calling Number Identification Service - Caller ID*, CC Docket No. 91-281, Third Report and Order, Memorandum Opinion and Order on Further Reconsideration, and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 3867, 3880 n.76 (1997) ("Plexar is a SWBT Centrex service").

²⁷¹ AT&T Opposition at 11-12.

²⁷² *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

²⁷³ Ameritech Petition at 9; see SBC Petition at 4.

²⁷⁴ See, e.g., Ameritech Petition at 9.

²⁷⁵ *Third Report and Order*, 13 FCC Rcd at 11777-78, para. 145.

directly related to number portability in any lawful manner consistent with their obligations under the Communications Act.²⁷⁶ We stated that allowing incumbent LECs to recover their carrier-specific number portability costs from their customers gives the incumbent LECs the option to forego some or all of the charges to compete in the local service market.²⁷⁷ We also noted in the *Third Report and Order* that regulating the recovery of number portability costs by incumbent LECs but not competitive LECs will not place any carrier at a competitive disadvantage because competitive LECs also have portability costs, and incumbent LECs are unlikely to have a "material disadvantage" in competing for subscribers under our rules.²⁷⁸ Here, the petitioners allege that they must "overcharge" their customers, and that such charges will cause them to lose customers. The incumbent LECs' allegations alone are insufficient to persuade us that the optional end-user charge does not provide competitive parity with CLECs, which also incur similar costs. At this stage, these carriers can only speculate that CLECs will not assess end-user charges for PBX lines and that incumbent LECs must always assess the end-user charges where they are faced with competition in a specific market. We see no reason, therefore, to abandon the requirements established in the *Third Report and Order* regarding the charges that apply to Centrex and PBX lines.

5. Recovery through the Incumbent LEC End-User Charge

a. Initiation of the end-user charge

(i) Background

83. In the *Third Report and Order*, we allowed incumbent LECs to assess a number portability monthly charge, for a five-year period, only on end users they serve in the 100 largest MSAs and on end users they serve outside the 100 largest MSAs when the switch serving that MSA is number-portability capable.²⁷⁹ We determined that such an approach will encourage carriers to install number portability and help ensure that end-users are assessed number portability charges only where they are reasonably likely to benefit from number portability.²⁸⁰ We chose the five-year period for the end-user charge because it enables incumbent LECs to recover their portability costs in a timely fashion, and also helps produce reasonable charges for customers and avoids imposing those charges for an unduly long period.²⁸¹ Florida asserts that this rule should be amended to provide that incumbent LECs may impose an end user charge "no sooner than the end users are reasonably able to begin receiving number portability."²⁸² Bell

²⁷⁶ *Id.* at 11774, para. 136.

²⁷⁷ *Id.* at 11775, para. 139.

²⁷⁸ *Id.*

²⁷⁹ *Id.* at 11776-77, paras. 142-144.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Florida PSC Petition at 3-4.

Atlantic states that Florida's request would be administratively difficult to impose and enforce.²⁸³

(ii) Discussion

84. We agree with Bell Atlantic and therefore decline to change our rules. We based our determination of when carriers may begin collecting end-user charges on our need to balance carriers' need to recover their costs with our concerns about consumer charges being levied before number portability is available in an area. Here, we agree with Bell Atlantic that allowing the imposition of number portability charges when individual end users are able to receive direct benefits would greatly increase the burden on carriers, due to carriers' need to determine when each residential and business line is number portability-capable, and then to begin billing consumers within that region only. We also agree with Bell Atlantic that changing the time a carrier may begin billing based on the individual availability of number portability would involve the Commission in numerous disputes over when that exact time had arrived. On the other hand, it is relatively simple for carriers and the Commission to make such determination within each MSA. It is also unclear how Florida's proposal would benefit individual consumers above and beyond our current provisions. We authorized carriers to begin assessing end-user charges no sooner than February 1, 1999 based on the implementation schedule and in anticipation that number portability would be available to a large number of customers by the end of 1998. Because number portability has been implemented in the top 100 MSAs since the end of 1998, as required by the *First Report and Order*, as modified,²⁸⁴ Florida's request is moot. We therefore deny Florida's request and uphold our earlier determination.

b. Recovery Period of the End-User Charge

(i) Background

85. In the *Third Report and Order*, we decided that incumbent LECs may recover their number portability costs with a federally-tariffed monthly end-user charge.²⁸⁵ We determined that the end-user charge may begin "no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and ... last no longer than five years."²⁸⁶ We decided further that after the five-year recovery of the implementation costs of number portability with the end-user charge, "[c]arriers can recover any remaining costs through existing mechanisms available for recovery of general costs of providing service."²⁸⁷

86. NECA and SBC request clarification regarding how incumbent LECs will recover

²⁸³ Bell Atlantic Response at 2-3.

²⁸⁴ See *Third Report and Order*, 13 FCC Rcd at 11712, para. 17.

²⁸⁵ *Id.* at 11773-74, 11776, paras. 135, 142.

²⁸⁶ *Id.* at 11776, para. 142; see also 47 C.F.R. § 52.33(a)(1).

²⁸⁷ *Third Report and Order*, 13 FCC Rcd at 11777, para. 144.

number portability costs beyond the five-year cost recovery period.²⁸⁸ SBC asks us to address this issue before we implement our directive on separations.²⁸⁹ Furthermore, SBC asks for clarification that, until the issue of the distribution of joint costs is decided,²⁹⁰ incumbent LECs are under no obligation to attempt to exclude what they would define as number portability costs from the separations process.²⁹¹ USTA urges us to clarify that section 52.33(a)(1) of the *Third Report and Order* specifically provides for a full five-year cost recovery period.²⁹² USTA asserts that the *Third Report and Order* is not clear as to whether incumbent LECs serving the top 100 MSAs may recover their implementation costs from end users over five years from the date the incumbent LECs begin the charge, or whether they must recover those costs from end users within five years of February 1, 1999.²⁹³

(ii) Discussion

87. We clarify that after incumbent LECs have recovered their initial implementation costs of number portability through the end-user charge, any remaining number portability costs will be normal network costs recoverable under general rate-of-return and price-cap regulations.²⁹⁴ We designed the end-user charge to ensure that incumbent LECs would have a reasonable opportunity to recover their initial costs of implementing number portability,²⁹⁵ which make up

²⁸⁸ NECA Petition at 8; SBC Petition at 8.

²⁸⁹ SBC Petition at 7-8 (citing *Third Report and Order*, 13 FCC Rcd at 11720, para. 29 (incumbent LECs' number portability costs will not be subject to separations)). Jurisdictional separations is the process of apportioning regulated costs between the intrastate and interstate jurisdictions, pursuant to Part 36 of the Commission's rules. 47 C.F.R. § 36 *et seq.* We note that at the time SBC's Petition was filed, the Commission was reviewing its jurisdictional separations procedures "to ensure that they meet the objectives of the 1996 Act, and to consider changes [that may be needed] in light of changes in the law, technology, and market structure of the telecommunications industry." See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22122, para. 2 (1997). On May 22, 2001, the Commission issued a Report and Order establishing a five-year interim freeze of the Part 36 separations rules, pending comprehensive reform of the separations process. This freeze will be in effect from July 1, 2001 to June 30, 2006, or until comprehensive reform is completed, whichever comes first. See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162 (rel. May 22, 2001).

²⁹⁰ In the *Third Report and Order*, the Commission delegated authority to the Chief of the Common Carrier Bureau to issue an order to provide guidance for carriers in determining their carrier-specific costs directly related to number portability. The intent was for carriers to have this guidance before they filed their number portability end-user charge tariffs, which were to take effect no earlier than February 1, 1999. *Third Report and Order*, 13 FCC Rcd at 11740, para. 75. The result was the *Cost Classification Order*, 13 FCC Rcd 24495.

²⁹¹ SBC Petition at 7-8.

²⁹² USTA Petition at 3.

²⁹³ *Id.*

²⁹⁴ See 47 C.F.R. §§ 61.38-61.39, 61.41-61.49.

²⁹⁵ *Third Report and Order*, 13 FCC Rcd at 11775, 11777, paras. 139, 144.

the majority of their number portability costs.²⁹⁶ Thus, we noted in the *Third Report and Order* that "once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis."²⁹⁷

88. In addition, we note that carriers' charges for providing query services to other carriers will continue beyond the five-year period of the number portability end-user charge.²⁹⁸ Because of this fact, the Common Carrier Bureau, in its *Cost Classification Order*, required price cap LECs to treat the query service charge as a new service within the meaning of section 61.49(g) of our rules.²⁹⁹ This action was consistent with the treatment of such charges in previously filed tariffs.³⁰⁰ We affirm this requirement. Furthermore, we require rate-of-return LECs that provide number portability query service to treat the query service as a new service within the meaning of section 61.49(g) of our rules. We note SBC's request that incumbent LECs be able to utilize the separations process for their number portability costs before the issue of the distribution of joint costs is decided.³⁰¹ Although SBC's request was rendered moot by the December 1998 release of the *Cost Classification Order*, we established an exclusively federal cost recovery mechanism for number portability costs in the *Third Report and Order*, which precludes assignment and recovery of number portability costs for intrastate ratemaking purposes, through the jurisdictional separations process.³⁰²

89. Finally, we clarify that incumbent LECs will have five years to recover their implementation costs of number portability through an end-user charge, regardless of when they initiate the charge. Thus, for example, if an incumbent LEC began its recovery through an end-user charge on June 1, 1999, it would have 60 months from that date to recover its implementation costs of number portability. We will amend section 52.33(a)(1) of our rules to read: "The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after the incumbent local exchange carrier's monthly number-portability charge takes effect."³⁰³

²⁹⁶ *Id.* at 11724-25, para. 38.

²⁹⁷ *Id.* at 11777, para. 144.

²⁹⁸ *Id.* at 11778-79, para. 147.

²⁹⁹ *Cost Classification Order*, 13 FCC Rcd at 24513, para. 47.

³⁰⁰ *Id.*

³⁰¹ SBC Petition at 7-8. *See supra* note 289 and accompanying text.

³⁰² *Third Report and Order*, 13 FCC Rcd at 11720, para. 29.

³⁰³ *See* Appendix B § 52.33(a)(1) (emphasis added).

c. Administration of the End-User Charge

(i) Background

90. UTC and Florida assert that the Commission should require that LECs imposing the end-user charge apply a standardized label, such as "Federal Number Portability Charge," because the myriad of new charges appearing on telecommunications bills has confused consumers.³⁰⁴ UTC states that while it has taken steps to educate its members on the new charges, this task is difficult in the absence of standard labels, and those UTC members that are customers of multiple LECs are faced with even greater complexity, as each LEC bill may contain a different description of the same type of charge.³⁰⁵ Florida requests the Commission implement public service announcements and require carriers to include bill inserts and explanations of new charges or services before they are introduced.³⁰⁶ Florida also asserts that the Commission should establish sufficient staffing to educate consumers about the number portability end-user charge.³⁰⁷

(ii) Discussion

91. It appears that the issues raised by UTC and Florida regarding formats for telephone bills are identical to those raised in the *Truth-in-Billing NPRM* and decided on April 15, 1999 in the *Truth-in-Billing Order*.³⁰⁸ In the *Truth-in-Billing Order*, we adopted broad principles and guidelines to promote truth-in-billing rather than rigid, detailed rules that govern carrier billing practices. We determined that services included on the telephone bill must be accompanied by a brief, clear description of the services rendered.³⁰⁹ This description must convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged.³¹⁰ We observed that the industry and consumer focus groups may be best equipped to develop standard service descriptions that are compatible with the character limitations for text messages and other operational restrictions found in the systems currently used for billing.³¹¹ In the *Truth-in-Billing Order*, we also noted that the failure of carriers to consistently label and accurately describe certain line item charges associated with federal

³⁰⁴ Florida PSC Petition at 2; UTC Comments at 5-6.

³⁰⁵ UTC Comments at 5-6.

³⁰⁶ See Florida PSC Petition at 1-2, 4-5.

³⁰⁷ *Id.* at 1-2.

³⁰⁸ *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (*Truth-in-Billing Order*).

³⁰⁹ *Id.* at 7516, para. 38.

³¹⁰ *Id.* at 7517-18, para. 40.

³¹¹ *Id.* at 7519 and 7525-26, paras. 43, 54.

regulatory action, such as the number portability end-user charge, has increased customer confusion about the nature of the charges.³¹² To address this problem, we adopted a guideline requiring carriers to use clear standardized labels on telephone bills to refer to line item charges related to federal regulatory action.³¹³ In addition, we sought comment on whether to mandate specific standard labels for such charges.³¹⁴ Although we declined to formulate standardized descriptions for services, such as the "Federal Number Portability Charge" suggested by UTC and Florida, we encouraged carriers and consumer groups to come together to develop uniform terminology and jointly submit proposals to the Commission.³¹⁵ Because we are already considering whether to require specific standard labels for number portability service and other line items in another proceeding, we will not resolve that question here. Instead, we will again encourage the industry and consumer groups to develop uniform terminology to describe the number portability end-user charge on customer bills.

d. Levelization of the End-User Charge

(i) Background

92. We held in the *Third Report and Order* that incumbent LECs must levelize their monthly number portability charge over five years.³¹⁶ A levelized rate is one that is calculated to remain constant over a recovery period and is set at the level at which the discounted present value of the stream of payments is equal to the discounted present value of the stream of costs over the period.³¹⁷ We require levelization of the monthly charge to protect consumers from varying rates.³¹⁸ Incumbent LECs may collect less than the maximum allowable charge, or decline to collect the charge, from some or all of their customers as long as they do so in a reasonable and nondiscriminatory manner.³¹⁹ We will not, however, allow incumbent LECs to offset lower charges for some customers by collecting higher charges in areas where no competitive carriers are present. We also stated that after a carrier establishes its levelized end-user charge in the tariff review process, we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set.³²⁰

³¹² *Id.* at 7524-25, paras. 52-53.

³¹³ *Id.* at 7525-26, para. 54.

³¹⁴ *Id.* at 7526-27, 7537, paras. 55, 71.

³¹⁵ *Id.* at 7519, para. 43.

³¹⁶ *Third Report and Order*, 13 FCC Rcd at 11776-77, para. 143.

³¹⁷ *Id.* at n.478.

³¹⁸ *Id.*, 13 FCC Rcd at 11776-77, para. 143.

³¹⁹ *Id.*

³²⁰ *Id.* at 11777, para. 144.

93. USTA asserts that incumbent LECs in the top 100 MSAs must be able to adjust their monthly number portability charge up or down to fully recover costs during the five-year recovery period without making the showing required by the Commission.³²¹ USTA asserts that demand for number portability can change, and customers can be lost, which makes it unlikely that an incumbent LEC's estimate of costs at the beginning of the five year recovery period will be the same as its actual costs throughout that period.³²²

(ii) Discussion

94. We decline at this time to change the rule adopted in the *Third Report and Order* concerning levelized charges.³²³ USTA has presented no compelling reason to do so. We continue to recognize consumers' sensitivity to end-user charges, as well as our stated goal of protecting consumers from varying rates.³²⁴ We note that we did not state in the *Third Report and Order* that carriers may never change their monthly end-user rates. Carriers may reduce their rates, provided they do so in a reasonable and nondiscriminatory manner.³²⁵ Also, we did not foreclose carriers from increasing their rates, but held that to do so, carriers must show that their end-user charges were not reasonable based on the information available at the time they were initially set. We continue to believe that requiring such a showing will best protect consumers from rate variances. Based on our goal of protecting consumers from rate shifts, we decline to grant USTA's request.

6. Querying all Calls to an NXX

a. Background

95. In the *First Report and Order*, we concluded that "there is no direct correlation between the number of queries made and the number of telephone numbers that have been forwarded because queries will be performed on all calls to a particular switch *once any single number has been transferred or 'ported' from that switch.*"³²⁶ In the *Third Report and Order*, we concluded that "long-term number portability requires N-1 carriers to incur query costs for all interswitch calls to an NXX once number portability is available for that NXX, whether or not the terminating customer has ported a number."³²⁷ We also stated that a carrier must query all interswitch calls to an NXX once number portability is "available" to determine whether the

³²¹ USTA Petition at 3-4.

³²² *Id.* at 4.

³²³ *Third Report and Order*, 13 FCC Rcd at 11776-77, paras. 142-46.

³²⁴ *Id.* at 11707, 11776-77, paras. 10, 143-44.

³²⁵ *Id.* at 11776-77, paras. 142-44.

³²⁶ *First Report and Order*, 11 FCC Rcd at 8463, para. 219 (emphasis added).

³²⁷ *Third Report and Order*, 13 FCC Rcd at 11729, para. 46.

terminating customer has ported the telephone number.³²⁸

96. In the *Cost Classification Order*, the Bureau directed the incumbent LECs, when filing their long-term number portability tariffs, to demonstrate whether their demand assumptions included performing queries for all calls in NXXs where no number had been ported and to explain why it is necessary to query calls in this situation.³²⁹

97. USTA seeks clarification of the *Third Report and Order*, requesting that the Commission establish a specific procedure for opening an NXX code for portability.³³⁰ USTA asserts that the procedures followed by carriers in opening NXX codes for portability varies among carriers. The carriers may either begin charging for queries on the Bellcore (now Telcordia) Local Exchange Routing Guide (LERG) effective date (which is in advance of an initial port), or begin charging for queries upon notice of the first service port.³³¹ USTA requests that the Commission establish a cost recovery mechanism for querying functions that provides no financial impact prior to implementation of "true number portability" and allows incumbent LECs with non-number portability capable switches to recover query costs only when legitimate queries are required.³³² USTA further requests that the Commission clarify that an incumbent LEC will not be required to perform query functions unnecessarily and prematurely.³³³

98. In addition to USTA's petition, Time Warner seeks reconsideration of the Bureau's order reconsidering the suspension³³⁴ of Sprint Local Telephone Companies' (Sprint) long-term number portability tariffs on the ground that Sprint's tariffs indicate that Sprint intends to charge for long-term number portability default queries on calls to NXXs where no number has been ported.³³⁵

b. Discussion

99. We note that the issue of queries for calls to NXXs where no number has been ported has been raised in the context of other number portability proceedings. Comcast Cellular Communications, Inc., in its petition for reconsideration of the Commission's *Query Services*

³²⁸ *Id.*

³²⁹ *Cost Classification Order*, 13 FCC Rcd at 24513, para. 48. We note that the issue of performing queries for calls to NXXs where no number has been ported also was raised in other related number portability proceedings.

³³⁰ USTA Petition at 2, 7; USTA Comments at 2.

³³¹ USTA Petition at 7.

³³² *Id.* at 7-8.

³³³ *Id.*

³³⁴ See *Long-Term Telephone Number Portability Tariff Filings of Sprint Local Telephone Companies*, CC Docket No. 99-35, Reconsideration of Decision To Suspend and Investigate Tariff Filings of Sprint Local Telephone Companies, 14 FCC Rcd 3828 (1999) (*Sprint LNP Tariff Reconsideration Order*).

³³⁵ Time Warner Petition for Reconsideration of Sprint LNP Tariff Reconsideration Order (filed Apr. 7, 1999).

Order,³³⁶ urged the Commission to address the issue of whether assessing default query charges on calls to non-ported NXXs is reasonable in regard to Bell Atlantic's interim query services tariff.³³⁷ In the course of the long-term number portability tariff investigations, the Bureau sought information from the carriers to enable the Bureau to resolve this issue.³³⁸ AT&T Communications and Time Warner filed comments regarding the tariffs filed by the incumbent LECs in response to the Bureau's *Cost Classification Order*, urging the Bureau to reject the tariffs of companies that impose default query charges on calls to NXXs with no ported numbers.³³⁹ In response, SBC argued that the issue of whether an incumbent LEC may query all calls to NXXs where a number has not been ported was resolved in the Commission's *Third Report and Order*, which requires carriers to query all interswitch calls to an NXX once number portability is available for that NXX in order to determine whether the terminating customer has ported a number.³⁴⁰

100. In the *LNP Investigation Order*, we affirmed the Bureau's conclusion that querying all calls and charging carriers prior to the date that a number is ported in an NXX is premature and inconsistent with the *Third Report and Order* and *Cost Classification Order* requirement that customers may not be charged for number portability until they are able to receive the benefits of that service.³⁴¹ This conclusion is based on the language in the *First Report and Order* wherein we stated that queries will be performed on all calls once any single number has been transferred or ported from that switch.³⁴² This language contemplates that carriers will not perform queries until a number has been ported from an NXX. We further concluded that querying all calls and

³³⁶ *Number Portability Query Services Order*, CC Docket No. 98-14, Order, 13 FCC Rcd 16117 (1998).

³³⁷ Comcast Cellular Communications Petition for Reconsideration (filed Sept. 18, 1998). The Commission denied Comcast's petition in an order released December 17, 1998. *Comcast Cellular Communications, Inc. Petition for Reconsideration of Number Portability Query Services Order*, CC Docket No. 98-14, Memorandum Opinion and Order, 14 FCC Rcd 1664 (1998). The Commission concluded that the issue would be most appropriately handled after the filing of the incumbent LECs' number portability tariffs, when both end-user and query costs would be before the Commission for review.

³³⁸ In the *Cost Classification Order*, the Bureau requested that carriers state whether their demand assumptions include performing queries for all calls even in NXXs where no telephone number has been ported and to explain why it is necessary to query all calls in this situation. See *Cost Classification Order*, 13 FCC Rcd at 24513, para. 48.

³³⁹ AT&T Petition to Reject or Suspend Tariffs at 8 (filed Jan. 22, 1999); Time Warner Petition to Suspend for One Day and Set for Investigation at 1-2 (filed Jan. 21, 1999); see also *LNP Designation Order*, 14 FCC Rcd 3367.

³⁴⁰ SBC Reply at 4-5 (filed Jan. 27, 1999).

³⁴¹ *LNP Investigation Order*, 14 FCC Rcd at 11949, para. 140; see also *Number Portability Designation Order*, 14 FCC Rcd at 3383, para. 46; *Third Report and Order*, 13 FCC Rcd at 11729, para. 46; *First Report and Order*, 11 FCC Rcd at 8463, para. 219.

³⁴² *LNP Investigation Order*, 14 FCC Rcd at 11947, para. 136 (citing *First Report and Order*, 11 FCC Rcd at 8463, para. 219). We also noted that the references in the *Third Report and Order* regarding queries to calls where number portability is "available" refer to paragraph 219 of the *First Report and Order*. See *Third Report and Order*, 13 FCC Rcd at 11711, para. 15 & n.58.

charging carriers prior to the date upon which a number is ported in an NXX is premature, unnecessary to prevent potential service disruption, and without value or purpose.³⁴³

101. We find that Sprint is not authorized to charge for long-term number portability default queries on calls made to NXXs where no number has been ported. In response to the Commission's decision in the *LNP Investigation Order*, however, Sprint amended its number portability tariff to discontinue the practice of charging N-1 carriers for long-term number portability default queries for calls to numbers in an NXX before a number has been ported from that NXX. Time Warner's petition for reconsideration is, therefore, moot and is denied.

IV. ORDER ON APPLICATION FOR REVIEW

A. Operation Support Systems (OSS) Costs

1. Background

102. In the *Third Report and Order*, the Commission delegated authority to the Bureau to determine appropriate methods for apportioning joint costs among portability and non-portability services and to issue an order to provide guidance to carriers before they file their federal tariffs.³⁴⁴ Consistent with the *Third Report and Order*, the Bureau's *Cost Classification Order* specifically addressed issues related to the determination of costs eligible for cost recovery, the apportionment of costs between portability and non-portability services, and the apportionment between end-user charges and query service charges.³⁴⁵ In it, the Bureau reiterated the earlier conclusions of the *Third Report and Order* and, consistent with its mandates, adopted a two-part test for identification of carrier-specific costs directly related to number portability.³⁴⁶ Pursuant to the *Cost Classification Order*, a carrier must demonstrate that the costs that are eligible for cost recovery through the federal recovery mechanism: (1) would not have been incurred by the carriers "but for" the implementation of number portability; and (2) were incurred "for the provision of" number portability.³⁴⁷ The Bureau stated that this two-part test avoids overcompensation of LECs for their costs because LECs are already deemed to be recovering costs of general network upgrades through "standard recovery mechanisms."³⁴⁸ Consistent with the *Third Report and Order*, the Bureau further held that LECs should not be allowed to recover such costs through both federal number portability charges and under price caps or rate-of-return regulation.³⁴⁹ The Bureau stated that it required LECs to distinguish clearly costs incurred for

³⁴³ *LNP Investigation Order*, 14 FCC Rcd at 11948-49, para. 139.

³⁴⁴ *Third Report and Order*, 13 FCC Rcd at 11740, para. 75.

³⁴⁵ See *Cost Classification Order*, 13 FCC Rcd at 24495, para. 1.

³⁴⁶ *Id.* at 24500, para. 10.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 24500, para. 11.

³⁴⁹ *Id.*

narrowly defined portability functions from costs incurred to adapt their systems to implement number portability, such as repair and maintenance, billing, or order processing systems.³⁵⁰

103. Several carriers filed applications for review or clarification of the *Cost Classification Order*.³⁵¹ Petitioners argue that the *Cost Classification Order* is too restrictive and prevents carriers from recovering all costs associated with the implementation of number portability.³⁵² Specifically, petitioners argue that the two-part test set out in the *Cost Classification Order* exceeds the Bureau's delegated authority by excluding costs associated with OSS modifications that are the direct result of number portability by incorrectly classifying them as general network upgrades.³⁵³ Petitioners also assert that the *Cost Classification Order* requires incumbent LECs to recover number portability costs through access charges and other cost recovery mechanisms prohibited by the *Third Report and Order*.³⁵⁴ Petitioners challenge the Bureau's determination that the two-part test excludes recovery of some OSS costs associated with the implementation of long-term number portability.³⁵⁵

2. Discussion

104. We disagree with those commenters who assert that the *Cost Classification Order* is overly restrictive and prevents carriers from recovering costs associated with the implementation of number portability.³⁵⁶ We agree with Ameritech that the Bureau set forth a reasonable methodology for the allocation of joint costs, and that this method is consistent with section 251(e)(2) of the Act and with the *Third Report and Order*.³⁵⁷ Additionally, we have previously approved the two-part cost classification test, as stated in the *LNP Investigation Order*³⁵⁸ and the *U S WEST LNP Investigation Order*.³⁵⁹ We also disagree with the assertion that carriers are not allowed to recover the costs of OSS modifications. As we stated in the *LNP Investigation Order*, "[t]he *Cost Classification Order* does not exclude all costs for modifications to OSS, but instead

³⁵⁰ *Id.* at 24501, para. 12.

³⁵¹ A list of petitioners and commenting parties appears at Appendix A.

³⁵² See Bell Atlantic Application at 2-3; Cincinnati Bell Application at 4-7; U S WEST Application at 7-13.

³⁵³ *Id.*

³⁵⁴ See Cincinnati Bell Application at 7; U S WEST Application at 13-17.

³⁵⁵ See Cincinnati Bell Application at 5-6; U S WEST Application at 12.

³⁵⁶ See Bell Atlantic Application at 2-3; Cincinnati Bell Application at 4-7; U S WEST Application at 7-13.

³⁵⁷ Ameritech Petition for Clarification or Review at 2-3.

³⁵⁸ *LNP Investigation Order*, 14 FCC Rcd at 11901-02, paras. 40-44.

³⁵⁹ See *Long-Term Number Portability Tariff Filings of U S WEST Communications, Inc.*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 11983, 11994, paras. 21-22 (1999) (*U S WEST LNP Investigation Order*).

excludes those costs incurred as 'an incidental consequence of number portability.'³⁶⁰ As we stated in the *Third Report and Order*, the costs carriers incur as an incidental consequence of number portability are not costs directly related to providing number portability and are, thus, ordinary costs of doing business in this new environment.³⁶¹ These costs may not be recovered through number portability charges. However, they may be recovered through price caps and rate-of-return recovery mechanisms.³⁶²

105. We disagree with U S WEST's assertion that the Bureau requires incumbent LECs to recover network costs, including any network upgrade or OSS cost, through cost recovery mechanisms that the Commission has expressly forbidden, namely through access charges and through state recovery mechanisms.³⁶³ In the *LNP Investigation Order*, we held that general network upgrades are not eligible number portability costs because they are assumed to be recovered through ordinary price cap and rate-of-return mechanisms.³⁶⁴ We stated in the *Third Report and Order* that carrier-specific costs directly related to number portability may not be recovered through access charges.³⁶⁵ In the *Cost Classification Order*, the Bureau correctly interpreted the *Third Report and Order* when it stated that carriers may recover some general network upgrades through price caps and rate-of-return regulation, but could not also recover these costs through the number portability cost recovery mechanism, because this could lead to double recovery.³⁶⁶ Thus, the Bureau has not required incumbent LECs to recover carrier-specific costs directly related to number portability through forbidden cost recovery mechanisms, but has merely stated that general upgrade costs that are incidental to number portability that are not recovered through the number portability federal charges may be recovered elsewhere, through access charges and state cost recovery mechanisms.

106. We also disagree with those commenters who assert that the two-part cost allocation method constitutes an unconstitutional taking because carriers' costs will not be recovered.³⁶⁷ U S WEST asserts that due to the Bureau's order, it must absorb approximately \$85 million in number portability costs, reflecting expenses for OSS changes, switch hardware and software upgrades, and signaling system expansion.³⁶⁸ We held in the *Third Report and Order* that

³⁶⁰ *LNP Investigation Order*, 14 FCC Rcd at 11902, para. 43.

³⁶¹ See *Third Report and Order*, 13 FCC Rcd at 11740, para. 72.

³⁶² *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

³⁶³ U S WEST Application at 13-17.

³⁶⁴ *LNP Investigation Order*, 14 FCC Rcd at 11901-02, para. 42.

³⁶⁵ *Third Report and Order*, 13 FCC Rcd at 11773, para. 135.

³⁶⁶ *Cost Classification Order*, 13 FCC Rcd at 24500-01, para. 11.

³⁶⁷ U S WEST Application at 17-19.

³⁶⁸ *Id.* at 7.

incumbent LECs may recover their carrier-specific costs directly related to providing number portability through two federally tariffed charges,³⁶⁹ including that portion of a carrier's joint costs that is demonstrably an incremental cost incurred in the provision of number portability.³⁷⁰ We held that costs the carriers incur as an incidental consequence of number portability are not costs directly related to number portability.³⁷¹ The Bureau correctly interpreted the *Third Report and Order* that the costs of general network upgrades are recoverable through "standard recovery mechanisms" under price caps or rate-of-return regulation.³⁷² We also held in the *Third Report and Order* that carriers not subject to rate regulation may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Act.³⁷³ Because carriers will be allowed to recover their costs through federally tariffed charges, through standard recovery mechanisms, or in any lawful manner, we do not agree that carriers are required to incur costs for which no cost recovery is allowed.

107. Moreover, we disagree with those commenters who assert that the Bureau did not give full consideration to arguments that certain OSS modifications were necessary to ensure that there will be no impairment of "quality, reliability, or convenience."³⁷⁴ We have previously considered and rejected this argument. In the *US WEST LNP Investigation Order*, the Commission noted that it previously considered and rejected the argument that all costs allegedly incurred to prevent any degradation of service, however insignificant, are eligible number portability costs.³⁷⁵ Although the industry, the NANC, and the Commission all considered degradation of the quality of service when selecting the method used to implement number portability,³⁷⁶ in the *First Report and Order* we expressly stated that the implementation of any long-term cost recovery method should not *unreasonably* degrade existing service quality or network reliability.³⁷⁷ We affirm our earlier finding that this performance criterion is not authority for the proposition that all costs incidental to achieving that performance level are costs incurred for the provision of number portability.³⁷⁸ Thus, OSS modification costs are eligible for

³⁶⁹ *Third Report and Order*, 13 FCC Rcd at 11773, 11778-79, paras. 135, 147.

³⁷⁰ *Id.* at 11740, para. 73.

³⁷¹ *Id.* at para. 72.

³⁷² *Cost Classification Order*, 13 FCC Rcd at 24500, paras. 10-11.

³⁷³ *See Third Report and Order*, 13 FCC Rcd at 11774, para. 136.

³⁷⁴ Bell Atlantic Application at 2-3; Cincinnati Bell Application at 3-4.

³⁷⁵ *US WEST LNP Investigation Order*, 14 FCC Rcd at 12000-01, para. 36.

³⁷⁶ *Cost Classification Order*, 13 FCC Rcd at 24501-02, para. 13.

³⁷⁷ *First Report and Order*, 11 FCC Rcd at 8378, para. 48.

³⁷⁸ *US WEST LNP Investigation Order*, 14 FCC Rcd at 12000-01, para. 36; *see also Cost Classification Order*, 13 FCC Rcd at 24501-02, para. 13.

cost recovery only to the extent that they are directly related to providing number portability.³⁷⁹

108. We disagree with Cincinnati Bell's assertion that the Bureau's cost allocation policy contradicts the Commission's previous statements that all number portability costs should be recoverable except to the degree the upgrade enhances other services.³⁸⁰ We affirm our earlier determination in the *LNP Investigation Order* and the *US WEST LNP Investigation Order* that costs carriers incur as an incidental consequence of number portability are ordinary costs of doing business in this new environment and represent general network upgrades.³⁸¹ Doing otherwise could overcompensate LECs who are already recovering costs of general network upgrades through "standard recovery mechanisms."³⁸² Such overcompensation would violate the provisions of the *Third Report and Order* that only those costs directly related to providing number portability are recoverable through federal number portability recovery mechanisms.³⁸³ We also affirm the Bureau's requirement that LECs must distinguish the costs of providing number portability itself, which are recoverable through the federal charges provided in the *Third Report and Order*, from general network upgrade costs recoverable through price caps and rate-of-return mechanisms in order to avoid possible double-recovery.³⁸⁴

109. We are not persuaded by Ameritech's assertion that because we have imposed access to OSS as a condition of BOC long-distance entry under section 271, OSS is clearly necessary to number portability and all OSS costs must be recoverable.³⁸⁵ In the *LNP Investigation Order*, we clarified that number portability cost recovery issues were not considered in the context of Ameritech's application to provide interLATA services in Michigan.³⁸⁶ We further held that statements we made in that context do not establish a standard for the recovery of OSS costs, nor should they be relied upon by the incumbent LECs as guidance in determining the eligible portion of OSS costs to be allocated to number portability tariffs.³⁸⁷ In the *Third Report and Order*, we noted that section 251(e)(2) "expressly and unconditionally grants the Commission authority to ensure that carriers bear the costs of providing number portability on a competitively

³⁷⁹ *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

³⁸⁰ Cincinnati Bell Application at 4.

³⁸¹ *LNP Investigation Order*, 14 FCC Rcd at 11916-17, para. 73; *US WEST LNP Investigation Order*, 14 FCC Rcd at 12000-01, paras. 35-37.

³⁸² See *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

³⁸³ *Third Report and Order*, 13 FCC Rcd at 11740, para. 72; see also *Cost Classification Order*, 13 FCC Rcd at 24500, para. 10.

³⁸⁴ *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

³⁸⁵ Ameritech Petition for Clarification or Review at 7-8.

³⁸⁶ *LNP Investigation Order*, 14 FCC Rcd at 11902, para. 44.

³⁸⁷ *Id.*

neutral basis."³⁸⁸ We concluded that an exclusively federal recovery mechanism would enable us to satisfy most directly our competitive neutrality mandate, and allowed incumbent LECs to recover their costs pursuant to the requirements we set forth.³⁸⁹ We fail to see how the fourteen-point checklist for BOC long-distance entry under section 271 negates our authority under sections 251 or 271, or how it changes our determination that not all costs of network upgrades could be recovered through federal number portability tariffs. We therefore disagree with Ameritech's assertion and deny its request to recover all OSS upgrade costs necessary for number portability through federal number portability end-user or query charges.

110. We also disagree with U S WEST's statement that we should have used an alternative method for calculating eligible OSS costs, rather than the two-part "but for" test adopted by the Bureau.³⁹⁰ U S WEST asserts that the economically proper way to calculate the direct costs of number portability would have been to take the costs of network upgrades that would not have been deployed absent the number portability mandate, add the extra costs of accelerating the deployment of otherwise-planned upgrades solely to meet the Commission's timetable, and subtract the value of the incidental non-portability network benefits these upgrades cost.³⁹¹ We believe that such a formula would be administratively difficult and does not conform to our previously-adopted formula. Specifically, we have not allowed LECs to add the extra costs of accelerating the deployment of otherwise-planned upgrades, because, as we stated in the *Third Report and Order*, upgrades that will enhance LECs' services generally are not costs eligible for recovery through federal number portability tariffs.³⁹² We also stated in the *LNP Investigation Order* that the two-part cost eligibility test avoids overcompensation of LECs for their costs because LECs are already deemed to be recovering costs of general network upgrades through standard recovery mechanisms.³⁹³ U S WEST has presented no compelling arguments to overturn the two-part formula adopted in the *Cost Classification Order*,³⁹⁴ and we therefore deny its request.

111. We further disagree with Cincinnati Bell's assertion that the Bureau's statement that number portability costs not directly related to the provision of number portability are to be treated as general network upgrades means that LECs will be competitively disadvantaged, and the cost recovery will not be competitively neutral.³⁹⁵ We stated in the *Third Report and Order*

³⁸⁸ *Third Report and Order*, 13 FCC Rcd at 11719, para. 28.

³⁸⁹ *Id.* at 11719-20, paras. 28-29.

³⁹⁰ U S West Application at 12-13.

³⁹¹ *Id.* at 13.

³⁹² *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

³⁹³ *LNP Investigation Order*, 14 FCC Rcd at 11901-02, para. 42.

³⁹⁴ *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

³⁹⁵ Cincinnati Bell Application at 7.

that costs not directly related to providing number portability are not costs of providing number portability that must be borne by all telecommunications carriers on a competitively neutral basis, as mandated by statute.³⁹⁶ Thus, costs that do not meet our two-part cost recovery formula are not subject to the competitive neutrality mandate. Additionally, as noted above, carriers cannot claim they are competitively disadvantaged because they are not allowed to recover their number portability costs, because they are allowed to recover such costs either through the number portability federal mechanism or through "normal" cost recovery mechanisms.

B. 911 Costs

1. Background

112. Several carriers request that we clarify that incremental costs incurred to adapt and upgrade 911 equipment, facilities, databases and software are required for the provision of number portability, and thus all upgrade costs should be recoverable.³⁹⁷ Bell Atlantic asserts that its system that supports 911 service was modified to permit a carrier to update the 911 database for telephone numbers in NXXs assigned to another carrier and to enable 911 personnel to direct database problems to the correct service provider.³⁹⁸ Bell Atlantic asserts that this work does not fit within the Bureau's narrow reading of the Commission's rules, but few customers would find porting satisfactory if they could not use 911 or if that service were not reliable.³⁹⁹

2. Discussion

113. We recognize the significant public safety concerns involved with 911 services. We, therefore, clarify that carriers will be allowed to treat and recover as number portability costs those costs to modify their 911 and E911 services and databases only to the extent that such OSS modifications to the 911 and E911 database provide updates of customer information or line and number information for ported numbers. In the *LNP Investigation Order*, we determined that the incumbent LECs may recover the costs of modifying E911 systems because of public interest considerations.⁴⁰⁰ Because of the public safety concerns involved with 911 and E911 service, we made an exception to the cost recovery standards set out in the *Cost Classification Order* to allow certain types of OSS modifications to these systems.⁴⁰¹ Thus, we allow these carriers to treat and recover as number portability costs those costs necessary to modify their 911 services

³⁹⁶ See *Third Report and Order*, 13 FCC Rcd at 11724, para. 37.

³⁹⁷ See Ameritech Petition for Clarification or Review at 10-11; Bell Atlantic Application at 3-4; Cincinnati Bell Application at 4-6.

³⁹⁸ Bell Atlantic Application at 4.

³⁹⁹ *Id.*

⁴⁰⁰ *LNP Investigation Order*, 14 FCC Rcd at 11905-06, para. 52.

⁴⁰¹ *Id.*

and databases only to the extent that such costs were incurred to provide number portability.⁴⁰² We stated, however, that modifications to OSS systems that relate to the LECs' provision of 911 or E911 service as part of the local service or plain old telephone service the LECs provide their own customers are not eligible number portability costs and may not be recovered through end-user and query service charges. Other costs associated with 911 or E911 modifications to the incumbent LECs' local service to its customers are general network upgrade costs recoverable through price caps and rate-of-return mechanisms.⁴⁰³

C. Joint Costs

1. Recovery of Advancement Costs

a. Background

114. In the *Third Report and Order*, we determined that carriers could not recover the entire cost of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade relates to the provision of number portability.⁴⁰⁴ We determined that only the portion of a carrier's joint costs that is a demonstrably incremental cost incurred in the provision of long-term number portability is a carrier-specific cost directly related to the provision of long-term number portability.⁴⁰⁵ We allowed LECs to recover only the incremental costs of upgrades through the federal number portability recovery mechanism.

115. Advancement costs are primarily those costs arising from the cost of money or the time value of money that have been incurred for the deployment of upgrades or modifications to the network at an accelerated pace or earlier date than provided for in the LECs' original plans.⁴⁰⁶ Consistent with the *Third Report and Order*, the Bureau's *Cost Classification Order* stated that LECs may claim only the incremental portion of advancement costs directly related to the provision of number portability.⁴⁰⁷ Bell Atlantic seeks review of the *Cost Classification Order* on the grounds that all advancement costs associated with the costs of advancing purchase should be recovered through the federal number portability cost recovery mechanism.⁴⁰⁸ Bell Atlantic posits that the entire cost of advancing purchases is a direct cost of number portability, because the advanced cost was incurred specifically to provide number portability and would not have

⁴⁰² *Cost Classification Order*, 13 FCC Rcd at 24500-01, paras. 10-11.

⁴⁰³ *Third Report and Order*, 13 FCC Rcd at 11740, paras. 72-73.

⁴⁰⁴ *Id.* at 11740, para. 73.

⁴⁰⁵ *Id.*

⁴⁰⁶ *Cost Classification Order*, 13 FCC Rcd at 24507 n.70.

⁴⁰⁷ *Id.* at 24507-08, para. 30.

⁴⁰⁸ Bell Atlantic Application at 4-5.

been incurred otherwise.⁴⁰⁹

b. Discussion

116. We disagree with Bell Atlantic's contention that the entire cost of advancing purchases is a direct cost of number portability. We affirm the Bureau's interpretation that only the incremental portion of advancement costs that are directly related to the provision of number portability are eligible number portability costs.⁴¹⁰ In the *Third Report and Order*, we specifically rejected requests that we classify the entire costs of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade related to the provision of number portability.⁴¹¹ In recognizing that carriers incur costs for software generics, switch hardware, and OSS, Signaling System 7 (SS7) or Advanced Intelligent Network (AIN) upgrades which provide a wide range of services and features, we stated that only a portion of these joint costs are carrier-specific costs directly related to providing number portability.⁴¹² We determined that all of a carrier's dedicated number portability costs, such as for number portability software and for service control points (SCPs) and signal transfer points (STPs) reserved exclusively for number portability would be subject to the competitive neutrality mandate of section 251(e)(2).⁴¹³ We reasoned that apportioning costs in this way would further the goal of section 251(e)(2) by recognizing that providing number portability will cause some carriers, including small and rural LECs, to incur costs that they would not ordinarily have incurred in providing telecommunications services.⁴¹⁴ At the same time, this approach recognizes that some upgrades will enhance carriers' services generally and presumably provide additional revenues to offset those upgrade costs, and that at least some portion of such upgrade costs are not directly related to providing number portability.

117. We agree with the Bureau that these same principles apply to advancement costs.⁴¹⁵ Even though the costs of planned upgrades may have been advanced by number portability requirements and LECs may not have deployed these upgrades early "but for" our portability implementation schedule, the associated upgrades provide general enhancements to the LECs' networks. We believe that allowing the recovery of advancement costs associated with general enhancements to the LECs' networks would violate the competitive neutrality mandate of section

⁴⁰⁹ *Id.* at 5.

⁴¹⁰ *Cost Classification Order*, 13 FCC Rcd at 24507-08, para. 30.

⁴¹¹ *Third Report and Order*, 13 FCC Rcd at 11740, para. 73.

⁴¹² *Id.* at 11740, paras. 72, 73. (Carrier-specific costs directly related to providing number portability are limited to costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another).

⁴¹³ *Id.* at 11740, para. 73.

⁴¹⁴ *Id.*

⁴¹⁵ See *Cost Classification Order*, 13 FCC Rcd at 24507-08, para. 30.

251(e)(2) and may lead to double recovery of these costs. Moreover, we believe that advancement costs associated with upgrades that enhance a carrier's services generally and presumably produce additional revenues are costs incurred as an incidental consequence of number portability and are not costs directly related to providing number portability.⁴¹⁶ Therefore, we affirm the Bureau's conclusion that only the advancement costs equaling the difference between the costs of the upgrade with the number portability function and its costs without that function may be claimed as eligible number portability costs.⁴¹⁷

V. FINAL REGULATORY FLEXIBILITY CERTIFICATION

118. The Regulatory Flexibility Act of 1980, as amended (RFA),⁴¹⁸ requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."⁴¹⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴²⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁴²¹ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴²²

119. Section 251(b)(2) of the Act seeks to remove one barrier to competition by requiring all local exchange carriers (LECs) "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." On May 5, 1998, the Commission adopted the *Third Report and Order* in this docket, implementing section 251(e)(2) of the Act with regard to the costs of providing local number portability. In the *Third Report and Order*, the Commission concluded that incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability on a competitively neutral basis, through two federal charges: (1) a monthly number-portability charge applicable to end users;

⁴¹⁶ *Third Report and Order*, 13 FCC Rcd at 11740, paras. 72-73.

⁴¹⁷ *Cost Classification Order*, 13 FCC Rcd at 24507-08, para. 30.

⁴¹⁸ The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴¹⁹ 5 U.S.C. § 605(b).

⁴²⁰ 5 U.S.C. § 601(6).

⁴²¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁴²² 15 U.S.C. § 632.

and (2) a number portability query-service charge, applicable to carriers on whose behalf the LEC performs queries. On December 14, 1998, pursuant to authority delegated to it in the *Third Report and Order*, the Bureau issued the *Cost Classification Order*, which specifically addressed issues related to the determination of costs eligible for cost recovery, the apportionment of costs between portability and non-portability services, and apportionment between end-user charges and query service charges.

120. This *Order* responds to three types of issues raised in petitions for reconsideration and clarification and applications for review. First, it clarifies numerous points made in the *Third Report and Order*.⁴²³ Second, it affirms several issues decided in the *Third Report and Order* and the *Cost Classification Order*.⁴²⁴ And third, it denies certain requests concerning cost recovery.⁴²⁵ No party filed comments or applications for reconsideration on the regulatory flexibility analysis contained in the *Third Report and Order*. In this *Order*, we have considered and addressed the comments of parties concerning recovery by non-LNP capable small and rural incumbent LECs of the costs of number portability query service and Local Number Portability Administration.

⁴²³ Specifically, it clarifies that: (1) the local number portability administrator may assess shared costs on all eligible telecommunications carriers, not just carriers with existing long-term number portability contracts; (2) incumbent LECs must allocate their shared costs between the query service and end-user charges; (3) carriers may not recover number portability costs from other carriers through interconnection charges or resale prices; (4) an incumbent LEC may assess the number portability end-user charge on resellers and purchasers of switching ports as unbundled network elements as long as it provides number portability functionality; (5) CMRS providers are co-carriers, not end users, and, therefore, are not subject to an end-user charge; (6) carriers who offer Feature Group A access lines may assess an end-user surcharge on such lines; (7) small and rural incumbent LECs that do not yet provide number portability functionality but provide EAS service may recover their N-1 query and Number Portability Administration costs through end-user charges; (8) incumbent LECs may not begin billing carriers for N-1 queries until a number has been ported from an NXX; and, (9) after the five-year recovery period for implementation costs of number portability through the end-user charge, any remaining costs will be treated as normal network costs.

⁴²⁴ Specifically, it affirms that: (1) the Commission has exclusive jurisdiction over the distribution and recovery of costs associated with intrastate and interstate number portability; (2) carriers not subject to rate-of-return regulation or price caps may recover their carrier-specific costs in any lawful manner consistent with their obligations under the Communications Act; (3) Centrex lines may be assessed one end-user number portability charge per line and a PBX trunk may be charged nine end-user number portability charges per PBX trunk; (4) Plexar may be assessed one number portability charge per line; (5) incumbent LECs may impose an end-user charge in service areas where the switch is number-portability-capable; (6) price cap LECs and rate-of-return LECs should treat the query services charge as a new service within the meaning of section 61.38 of our rules; (7) carriers may only recover carrier-specific costs directly related to the provision of number portability; (8) carriers must distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt their systems to implement number portability; (9) costs carriers incur as an incidental consequence of number portability are ordinary costs of doing business and represent general network upgrades; and (10) costs that do not meet the two-part cost recovery test may not be recovered through number portability cost recovery mechanisms. It also affirms (11) the adoption of the end-user revenue allocator; (12) the rules adopted in the *Third Report and Order* concerning levelized charges; and (13) the two-part cost recovery test.

⁴²⁵ Specifically, it denies requests that certain costs associated with number portability be calculated based on avoided costs and TELRIC.

121. All clarifications contained in this item are of a minor, procedural nature except one clarification that will result in a positive net impact on small entities. Small and rural incumbent LECs that do not yet provide number portability functionality but do provide service under Extended Area Service arrangements may recover their N minus one query and Local Number Portability Administration costs through end-user charges. Because this will allow small and rural incumbent LECs to recover their costs, it will have a *de minimus* impact on the affected small entities.

122. Therefore, we certify that the requirements of the *Order* will not have a significant economic impact on a substantial number of small entities.

123. The Commission will send a copy of the *Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁴²⁶ In addition, the *Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.⁴²⁷

VI. PAPERWORK REDUCTION ANALYSIS

124. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement of OMB approval in the Federal Register.

VII. ORDERING CLAUSES

125. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332, this Memorandum Opinion and Order on Reconsideration and Order on Application for Review ("Order") and the revisions to Part 52 of the Commission's rules, 47 C.F.R. Part 52, are hereby ADOPTED. The requirements in this Order shall become effective 30 days after a publication of this Order or summary thereof in the Federal Register.

126. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 251(b)(2), 251(e)(2), and 332, the Petitions for Reconsideration and/or Clarification and the Applications for Review ARE GRANTED to the extent indicated herein and otherwise ARE DENIED.

127. IT IS FURTHER ORDERED that Williams' Petition for Expedited Waiver and

⁴²⁶ See 5 U.S.C. § 801(a)(1)(A).

⁴²⁷ See 5 U.S.C. § 605(b).

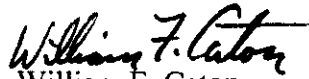
AMSC's Waiver Request are GRANTED, as discussed herein.

128. IT IS FURTHER ORDERED that NECA's Expedited Petition for Waiver is DENIED as discussed herein.

129. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

130. IT IS FURTHER ORDERED that the collection of information contained within this Order is contingent upon approval by the OMB. The Commission will publish a document at a later date announcing OMB approval.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A: PARTIES TO THE PROCEEDING**Petitions for Reconsideration and Clarification**

Ameritech
Bell Atlantic
BellSouth Corporation
Comcast Cellular Communications, Inc.
Florida Public Service Commission
MCI Telecommunications Corporation
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
New York Department of Public Service
Oklahoma Rural Telephone Coalition
Pennsylvania Office of the Consumer Advocate
Personal Communications Industry Association
SBC Communications Inc.
Sprint Local Telephone Companies
Texas Statewide Telephone Cooperative, Inc.
U S WEST, Inc.
United States Telephone Association
WorldCom, Inc.

Responses to and Comments on Petitions for Reconsideration and Clarification

AT&T Corp.
Bell Atlantic
BellSouth Corporation
Cincinnati Bell Telephone Company
Lockheed Martin IMS
Maine Public Utilities Commission
MCI Telecommunications Corporation
Organization for the Promotion and Advancement of Small Telecommunications Companies
SBC Communications Inc.
Telephone Resellers Association
United States Telephone Association
UTC, the Telecommunications Association
Vanguard Cellular Systems, Inc.

Reply Comments

Ameritech
Bell Atlantic
BellSouth Corporation
Comcast Cellular Communications, Inc.
MCI Telecommunications Corporation
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
SBC Communications Inc.
Sprint Local Telephone Companies
US WEST Communications, Inc.

Applications for Review and Petition for Clarification or Review of Joint Cost Order

Ameritech
Bell Atlantic
Cincinnati Bell Telephone Company
U S WEST Communications, Inc.

Oppositions to Comments on Applications for Review and Petition for Clarification or Review of Joint Cost Order

AT&T Corp.
BellSouth Corporation
Independent Telephone & Telecommunications Alliance
United States Telephone Association

Replies and Responses

Bell Atlantic
Cincinnati Bell Telephone Company
SBC Communications Inc.
U S WEST Communications, Inc.

APPENDIX B—FINAL RULES**PART 52 - NUMBERING**

1. The authority for Part 52 continues to read as follows:

AUTHORITY: Secs 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Part 52, subpart C, section 52.33(a) of Title 47 of the Code of Federal Regulations is amended to read as follows:

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability

(a) Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1), a number portability query-service charge, as specified in paragraph (a)(2), and a monthly number-portability query/administration charge, as specified in paragraph (a)(3).

(1) The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after the incumbent local exchange carrier's monthly number-portability charge takes effect.

(i) * * *

(ii) An incumbent local exchange carrier may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and/or Feature Group A access lines, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(i) of this section, as if the incumbent local exchange carrier were serving those carriers' end users.

(iii) * * *

(iv) * * *

(2) * * *

(3) An incumbent local exchange carrier serving an area outside the 100 largest metropolitan statistical areas that is not number-portability capable but that participates in an extended area service calling plan with any one of the 100 largest metropolitan statistical areas or with an adjacent number portability-capable local exchange carrier may assess each end user it serves

one monthly number-portability query/administration charge per line to recover the costs of queries, as specified in paragraph (a)(2), and carrier-specific costs directly related to the carrier's allocated share of the regional local number portability administrator's costs, except that per-line monthly number-portability query/administration charges shall be assigned as specified in paragraph (a)(1) with respect to monthly number-portability charges.

(i) Such incumbent local exchange carriers may assess a separate monthly number-portability charge as specified in paragraph (a)(1) but such charge may recover only the costs incurred to implement number portability functionality and shall not include costs recovered through the monthly number-portability query/administration charge.

(ii) The monthly number-portability query/administration charge may end no later than five years after the incumbent local exchange carrier's monthly number-portability query/administration charge takes effect. The monthly number-portability query/administration charge may be collected over a different five-year period than the monthly number-portability charge. These five-year periods may run either consecutively or concurrently, in whole or in part.

* * * *

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART**

Re: Telephone Number Portability (CC Docket No. 95-116)

I dissent from the part of this Order that authorizes a new monthly number portability charge on certain customers' bills for a service those customers are not even able to obtain. In the Telecommunications Act of 1996, Congress recognized that the inability of customers to retain their telephone number when they switch service providers would impede the development of competition. Congress therefore imposed a number portability obligation on local exchange carriers.

To implement this directive of the 1996 Act, the Commission in previous orders required carriers that received a request from another carrier to upgrade their networks to provide number portability. For those carriers that receive such a request, the Commission allowed, but did not require, carriers to recover from their customers the costs of upgrading their networks. Importantly, however, the Commission prohibited carriers from charging customers until local number portability was actually available to those customers. As a result, carriers could only assess a monthly charge on customers that receive the direct benefits of number portability. Moreover, the Commission determined that carriers could only assess the charge for five years, and that any ongoing costs would have to be recovered from other existing mechanisms.

In today's Order, the Commission foregoes that approach, and allows carriers that have not upgraded their networks to assess a monthly charge for ongoing costs. Customers of these carriers may therefore have to pay a monthly fee, but will not be able to retain their phone number if they switch providers. Even more of a problem, this fee will have a disproportionate impact on consumers served by smaller, more rural carriers, and could result in charges estimated as high as \$1.00 per month for some customers.

Certainly carriers are entitled to recover the legitimate costs of implementing number portability. But customers should be receiving the real and direct benefits of number portability before they are forced to pay a monthly fee. I do not believe that today's Order appropriately balances these concerns. I would have followed the previous Commission's decision and not allowed carriers to impose a new line-item until their customers receive the benefits of the service. Indeed, just last month, this Commission determined that the costs of implementing number conservation measures should be recovered from other existing mechanisms, and not from a new line-item on customers' bills. I see no reason to adopt a different approach here. Consumers should be rightly dissatisfied when they are asked to pay for services that are not available to them.